

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 05-3407

United States of America,

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Appellee,

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v.

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Appeal from the United States

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District Court for the

Franklin Howard Rorebeck, also known
as Frank White,

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District of Nebraska.

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[UNPUBLISHED]

Appellant.

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Submitted: July 6, 2006

Filed: July 10, 2006

Before RILEY, MAGILL, and GRUENDER, Circuit Judges.

PER CURIAM.

Franklin H. Rorebeck pleaded guilty to conspiring to distribute and possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841 and 846. The district court¹ sentenced him to 210 months in prison and 5 years of supervised release. On appeal, in a brief filed pursuant to Anders v. California, 386 U.S. 738 (1967), counsel challenges the district court's denial of a downward departure from the advisory Guidelines range based on Rorebeck's overstated criminal history. The

¹The Honorable Richard G. Kopf, United States District Judge for the District of Nebraska.

district court's decision is unreviewable because the court acknowledged its authority to depart, and nothing in the record indicates the court's refusal was based upon an unconstitutional motive. See United States v. Morell, 429 F.3d 1161, 1164 (8th Cir. 2005) (following United States v. Booker, 543 U.S. 220 (2005), district court's discretionary decision not to depart downward is still not reviewable under 18 U.S.C. § 3742); United States v. Dabney, 367 F.3d 1040, 1044 (8th Cir. 2004) (district court's refusal to grant downward departure is generally unreviewable on appeal, unless district court had unconstitutional motive or erroneously believed it was without authority to grant departure).

Having independently reviewed the entire record in accordance with Penson v. Ohio, 488 U.S. 75 (1988), and finding no nonfrivolous issues, we affirm the judgment of the district court. Counsel's motion to withdraw is granted.
